

APPENDIX 1- FORM OF CONTRACT

[This form of contract is subject to the usage and terms and conditions specified in the RFP and is not an offer to contract.]

CONSULTING SERVICES AGREEMENT FOR METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY SMALL BUSINESS ENTERPRISE (SBE) AUDIT SERVICES

CONTRACT NO. 1145

This consulting services agreement (“Agreement”) is dated [____], 2011 and is between the Pasadena Metro Blue Line Construction Authority, also known as Metro Gold Line Foothill Extension Construction Authority (“Authority”) and [____] (“Consultant”).

R E C I T A L S

A. Pursuant to California Public Utilities Code section 132405, Authority is responsible for completing the construction of the Los Angeles to Pasadena Metro Blue Line light rail project, extending from Union Station in the City of Los Angeles to Sierra Madre Villa Boulevard in the City of Pasadena, and any mass transit guideway that may be planned east of Sierra Madre Villa Boulevard along the rail right-of-way (“ROW”) extending to the City of Claremont.

B. Phase 2, also known as the “Foothill Extension”, is an anticipated approximate 24 mile east-west light rail extension of Phase 1 from the City of Pasadena to the City of Montclair. The Foothill Extension is the “Project” for purposes of this Agreement.

C. The Foothill Extension is anticipated to begin at the Sierra Madre Villa Boulevard Station in the City of Pasadena, run along the acquired railroad right-of-way (“ROW”) parallel to Interstate 210 (I-210) and Arrow Highway, and connect to the downtown areas of the cities of Arcadia, Monrovia, Duarte, Irwindale, Azusa, Glendora, San Dimas, La Verne, Pomona, and Claremont.

D. The Foothill Extension will be built in two segments. The first segment covers the extension from the Sierra Madre Villa Station in City of Pasadena to the City of Azusa (planned for construction completion in 2015). This first segment will be build using three design-build contracts: (1) the Iconic Freeway Structure, (2) Phase 2A Alignment, and (3) Parking Facilities. The second segment covers the extension from the City of Azusa to the City of Montclair.

E. Authority contemplates entering into three design-build contracts for the first segment: (a) a contract for the Santa Anita (I-210) Bridge (also known as the “Iconic Freeway Structure”) and median barrier replacement; (b) a contract for alignment,

structures, and a maintenance and operations facility between Sierra Madre Villa Station and Citrus Avenue in Azusa; and (c) a contract for six intermodal parking facilities.

F. The Authority seeks to procure certain consulting services in the form of small business enterprise (SBE) audit services of the three associated design-build contracts for the first segment (Pasadena to Azusa) as described in the Scope of Work attached hereto.

G. Authority desires to retain [_____] to provide such consulting services.

H. [_____] desires to provide such consulting services.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which each party acknowledges, the parties hereby agree as follows:

1. Term. This Agreement shall terminate at 11:59 P.M. on June 30, 2015 (the "Termination Date"). Consultant shall perform the services by or before the Termination Date and in accordance with the schedule included in the Scope of Services. The parties may extend this Agreement by mutual written consent.

2. Scope of Services. Consultant shall perform the services as set forth Exhibit A in a manner reasonably satisfactory to Authority and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

3. Compensation.

a. Authority agrees to compensate Consultant for the services which Consultant performs to the satisfaction of Authority's Responsible Principal, and Consultant agrees to accept in full satisfaction for the services required by this Agreement, an amount not to exceed \$[_____] and more particularly described in Exhibit B, attached hereto. Loaded hourly rates indicated on Exhibit B or otherwise paid pursuant to this Agreement shall compensate Consultant and subconsultants at a home office overhead rate not to exceed 145%, and field office overhead rate not to exceed 125%, of the actual, unburdened hourly rate of direct labor, plus a fixed fee not to exceed 10% of such actual, unburdened hourly rate of direct labor. To be clear, such overhead rates serve as payment for, and include within them, any general and administrative expenses as well as any other appropriate indirect costs.

Prior to submitting the first invoice, Consultant shall submit a completed Form 60, attached hereto as Exhibit G, to Authority as evidence of compliance with the aforementioned not to exceed rates. The prime contractor may receive a handling fee on subcontractors and Other Direct Costs (ODC) not exceeding 3% of their subcontract and ODC value. The compensation shall constitute reimbursement of Consultant's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). Authority shall

pay Consultant the compensation in accordance with the schedule of payment set forth in Exhibit B. Reimbursement of business and travel expenses shall be determined according to Section 23.

b. Additional services outside the scope of this Agreement shall be compensated for an amount agreed upon by Authority and Consultant in advance of payment and shall be incorporated into this Agreement through the issuance of an amendment to this Agreement. Additional services shall be invoiced and paid in accordance with the terms of this Agreement. Consultant shall not be entitled to compensation for additional services until the additional services are incorporated into this Agreement through the issuance of an amendment.

c. Consultant agrees that its right to receive the final payment pursuant to this Agreement is contingent upon submittal of all deliverables hereunder to the reasonable satisfaction and approval of Authority. Should Authority not approve any or all such deliverables, Consultant shall revise the deliverables to Authority's reasonable satisfaction and approval, at no additional expense to Authority. Authority shall have the right to withhold, in its sole discretion, any or all of the Consultant's final payment until Authority approves all of Consultant's deliverables.

4. Method of Payment. Authority shall pay invoices (or uncontested portions thereof) within 30 days after receipt of a proper invoice. Consultant shall not submit more than one invoice per calendar month. Invoices shall contain the following information, and be in the following form:

- a. The Agreement Number (C1145)
- b. A completed Form 103 "Monthly DBE Subcontractors Paid Report Summary and Payment Verification" attached hereto as Exhibit F ("Form 103").
- c. An itemization of costs separated into the following categories: "Original Scope" (the services as set forth in Exhibit A), and an additional category for each "Additional Scope" (additional services outside the Original Scope as set forth in an amendment), if any.
- d. Supporting documentation for labor costs.
- e. A reference to an amendment(s), if any, authorizing costs itemized in the Additional Scope.
- f. Authorized reimbursable actual expenses and original receipts or other documentation substantiating such expenses in accordance with Section 23.

Consultant shall send all invoices attention to the Finance Department at the Authority's address set forth herein. Consultant shall notify Authority in writing prior to incurring 85% of the total "not to exceed" compensation amount set forth in Section 3. The notice shall also include an estimate of compensation that will be required to complete in the services as set forth in Exhibit A.

Consultant is responsible for the accuracy and adequacy of its billing statements. If Authority raises any questions or concerns regarding Consultant's billing statements, Consultant shall confer directly with Authority to resolve the questions and concerns to the satisfaction of Authority.

5. Representatives.

a. Authority Representative. For the purposes of this Agreement, the Authority's representative shall be the Chief Executive Officer or his designee (hereinafter the "Authority Representative"). It shall be Consultant's responsibility to ensure that the Authority Representative is kept informed of the progress of the performance of the services, and Consultant shall refer any decisions that must be made by Authority to the Authority Representative except for the purpose of transmitting notices as set forth herein. Unless otherwise specified herein, any approval of Authority required hereunder shall mean the approval of the Authority Representative.

b. Consultant Representative. For the purposes of this Agreement, [____], shall be Consultant's representative authorized to act on Consultant's behalf with respect to the services specified herein and make all decisions in connection therewith.

6. Personnel.

a. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform the services under this Agreement. All personnel engaged in performing the services shall be qualified to perform such services.

b. Consultant shall be solely responsible for the satisfactory work performance of all personnel performing the services under the Agreement, and compliance with all performance standards set forth in this Agreement or otherwise reasonably required by Authority, appropriate governmental agencies and applicable law.

c. Consultant shall be responsible for payment of all employees' and subconsultants' wages and benefits.

d. Consultant reserves the right to determine the assignment of its personnel to the performance of the services under this Agreement, except that the Project Manager and other key personnel identified in the Proposal will perform the Work to the extent proposed in the Proposal for the term of this Agreement.

e. Authority reserves the right, for good cause, to require Consultant to exclude any employee from performing the services on Authority's premises. Furthermore, Consultant shall secure Authority's prior written approval for any change or reassignment of "key" personnel (individuals for whom resumes were provided pursuant to RFP Section 2.1.3.2). In the event that Authority, for good cause, desires the exclusion of any person(s) assigned by Consultant to perform the services under to

this Agreement, Consultant shall exclude such person(s) immediately upon receiving notice of such from Authority.

7. Subconsultants.

a. Consultant shall not use any subconsultant or pay any subconsultant not identified in Exhibit D, attached hereto, to perform any of Consultant's services under this Agreement, without Authority's prior written approval.

b. Consultant may not change any subconsultants without the Authority's prior written approval.

c. Authority reserves the right, in its sole discretion, to require Consultant to remove any subconsultant(s) from performing the services under this Agreement. In the event that Authority, in its sole discretion, desires the removal of any subconsultant(s) assigned by Consultant to perform the services under this Agreement, Consultant shall remove any such subconsultant(s) immediately upon receiving such notice from Authority.

d. Any agreements between Consultant and subconsultants in excess of \$25,000 in consideration, entered into as a result of this Agreement, shall contain all of the provisions stipulated in this Agreement as applicable to subconsultants.

8. Independent Contractor.

a. Consultant is, and shall at all times remain as to Authority, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of Authority or otherwise act on behalf of Authority as an agent. Neither Authority nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of Authority.

b. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify, defend, and hold Authority harmless from any and all taxes, assessments, penalties, and interest asserted against Authority by reason of the independent contractor relationship created by this Agreement. In the event that Authority is audited by any Federal or State agency regarding the independent contractor status of Consultant and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between Authority and Consultant, then Consultant agrees to reimburse Authority for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

c. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify, defend, and hold Authority harmless from any failure of Consultant to comply with applicable workers' compensation laws. Authority shall have the right to offset against the amount

of any fees due to Consultant under this Agreement any amount due to Authority from Consultant as a result of Consultant's failure to promptly pay to Authority any reimbursement or indemnification arising under this Section 8.

9. Facilities And Equipment.

Except as otherwise approved by Authority in writing, Consultant shall, at its sole expense, furnish all facilities and equipment that may be required for furnishing the services under this Agreement.

10. Indemnification.

a. Indemnity for Professional Liability. When the law establishes a professional standard of care for the services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless Authority and any and all of its members, officials, officers, employees, agents, attorneys, representatives, consultants, successors and assigns ("Indemnified Parties") from and against any and all claims, charges, liabilities, damages, demands, actions, proceedings, losses, costs, expenses, whether actual, alleged or threatened, actual attorney's fees, court costs, and accountant's fees, judgments, civil fines and penalties, and liabilities of any kind or nature whatsoever ("liabilities"), to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual for which or for whom Consultant shall bear the legal liability) in the performance of professional services under this Agreement.

b. Indemnity for Other than Professional Liability. Other than in the performance of professional services and to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the Indemnified Parties from and against all liabilities to the extent caused in whole or in part by any negligent or wrongful act, error, or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual for which or for whom Consultant shall bear the legal liability) in the performance of this Agreement, including but not limited to, claims, suits and liabilities for bodily injury, death or property damage to any individual or entity, including employees or officials of Consultant. The provisions of this paragraph shall not apply to claims arising out of the gross negligence or willful misconduct of the Indemnified Parties, provided such gross negligence or willful misconduct is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where Authority is shown to have been grossly negligent or engaged in willful misconduct in accordance with the preceding sentence, and where Authority's gross negligence or willful misconduct accounts for only a percentage of the liability involved, the obligation of Consultant will be for that entire portion or percentage of liability not attributable to the gross negligence or willful misconduct of Authority.

c. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every

subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this Section 10.

d. This obligation to indemnify, defend and hold harmless the Indemnified Parties is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or final payment hereunder. This obligation to indemnify, defend and hold harmless is in addition to any other rights or remedies that the Indemnified Parties may have under the law. Failure of Authority to monitor compliance with these requirements imposes no additional obligations on Authority and will in no way act as a waiver of any rights hereunder.

e. In the event of any claim or demand made against an Indemnified Party which is entitled to be indemnified hereunder, Authority may, in its sole discretion, reserve, retain or apply any monies due to Consultant under this Agreement for purposes of resolving such claims; provided, however, Authority may release such monies if Consultant provides Authority with reasonable assurance of protection of the Indemnified Party's interests. Authority shall, in its sole discretion, determine whether such assurances are reasonable.

f. In the event more than one person or entity is named in this Agreement as Consultant, all obligations to indemnify, defend and hold harmless under this Section 10 shall be joint and several.

g. The indemnity requirements set forth in this Section 10 are intended to be separate and distinct from any other provision in this Agreement and are intended to be interpreted as such.

11. Insurance.

a. Consultant shall, at its sole expense and all times during the term of this Agreement, maintain, and keep in full force and effect, the following policies of insurance issued by insurers licensed to do business in the State of California with A.M. Best ratings of no less than A-:

(1) Broad-form commercial general liability with minimum limits of \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate;

(2) Automotive liability with minimum limits of \$1,000,000 per accident, combined single limit;

(3) Worker's compensation on a state-approved policy form providing statutory benefits as required by law with minimum employer's liability limit of \$500,000 per accident for all covered losses; and

(4) Professional liability coverage with a minimum limit of liability of \$1,000,000 per claim and \$2,000,000 in the aggregate, providing coverage for any damages or losses suffered by Authority as a result of any error or omission or neglect by Consultant which arises out of the professional services of Consultant rendered under this Agreement. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by Consultant, which shall not exceed \$100,000 per claim.

b. Consultant shall endorse the general liability coverage required herein to include as additional insureds (using ISO Form CG2010 0704) Authority, its members, officials, officers, employees, agents, attorneys, representatives, and consultants, and the Los Angeles County Metropolitan Transportation Authority (“MTA”), its members, officials, officers, employees and agents. Consultant shall require the same of all subconsultants or any other party engaged by or on behalf of Consultant in relation to this Agreement.

c. The insurance policies as to commercial general liability, automotive liability, and errors and omissions liability shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to Authority.

d. No coverage required herein shall prohibit Consultant, or Consultant’s employees or agents, from waiving the right of subrogation prior to a loss. Consultant shall waive its right of subrogation against Authority or MTA.

e. All coverage types and limits required herein and deductibles are subject to approval, modification and additional requirements by Authority, as the need arises. Consultant shall not cancel, reduce or otherwise modify insurance coverages required herein without Authority’s prior written approval. Authority reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving Consultant 90 days written notice of such change. Any such change that increases Consultant’s costs, will be compensated by Authority in an amount to be negotiated by the parties.

f. All insurance policies required herein shall provide that insurers shall not cancel, reduce, or otherwise modify any coverage required herein without the insurer giving Authority 30 day’s prior written notice. Consultant shall require the same of all subconsultants or any other party engaged by or on behalf of Consultant in relation to this Agreement.

g. In the event any insurance policy required herein does not comply with the requirements of this Section 11 or is canceled and not replaced, Authority has the right, but not the duty, to obtain the insurance it deems necessary and available at a reasonable cost, and any premium paid by Authority shall be promptly reimbursed by Consultant or Authority may withhold monies due to Consultant sufficient to pay the premium.

h. Consultant shall provide evidence of the insurance required herein, satisfactory to the CFO, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, not less than three days prior to beginning of performance under this Agreement. Consultant shall, upon Authority's request, allow Authority to review in Authority's offices complete, certified copies of any policies required herein, within ten days of such request. Any actual or alleged failure of Authority or any additional insured to obtain proof of insurance required under this Agreement shall in no way waive any right or remedy of Authority or any additional insured.

i. Consultant agrees to provide immediate notice to Authority of any claim or loss against Consultant arising out of the performance of this Agreement. Authority assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of such claim or claims if they are likely to involve Authority.

j. The insurance requirements set forth in this Section 11 are intended to be separate and distinct from any other provision in this Agreement and are intended to be interpreted as such.

12. Confidentiality. All data, documents, drawings, specifications, reports, records, discussion, or other information developed or received by Consultant or provided for performance of the services under this Agreement are deemed confidential information. Consultant shall not disclose confidential information without Authority's prior written approval. Notwithstanding the foregoing, Consultant shall not be in violation of this Section 12 with regard to disclosure that is in response to a valid order by a court or other governmental body, provided that Consultant is advised by legal counsel that such disclosure is required by law, and such disclosure is limited to the minimum extent required by law. Within ten business days following the date of any termination of this Agreement, Consultant shall return all confidential information provided by Authority to Consultant. Consultant's covenant under this Section 12 shall survive the termination of this Agreement.

13. Ownership of Materials. All materials prepared or provided by Consultant in the performance of this Agreement shall be and remain the property of Authority without restriction or limitation upon its use or dissemination by Authority.

14. Conflict of Interest.

a. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of the services under this Agreement. No person having any such interest shall be employed by or be associated with Consultant. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the services under this Agreement.

b. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of any hardware or software or other such equipment to Authority as a result of the performance of Consultant's services under this Agreement. Consultant's covenant under this Section 14 shall survive the termination of this Agreement.

15. Licensing and Taxes.

a. Consultant shall, at its sole expense, obtain and maintain during the term of this Agreement all necessary licenses, permits and certificates required by law for the performance of the services under this Agreement.

b. Consultant is liable for any and all taxes as a result of the performance of the services under this Agreement.

16. Financial Condition. Within 30 days of the first year anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement, Consultant shall submit such financial information as may be appropriate to establish to the satisfaction of Authority's CFO that Consultant is in at least as sound a financial position as Consultant was prior to executing this Agreement. The Authority's CFO shall return all financial statements and documentation submitted by Consultant after review and shall not retain the financial information.

17. Non-Discrimination and Equal Employment Opportunity.

a. Consultant shall not discriminate against any employee or applicant for employment, or harass or allow harassment of any employee or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, family care leave, or sexual orientation. Such actions shall include, but are not limited to the following: employment, upgrading, promotion, demotion, transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

b. Consultant shall, in all solicitations or advertisements for employees placed by, or on behalf of Consultant, state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, family care leave, or sexual orientation.

c. Consultant shall comply with the provisions of the California Fair Employment and Housing Act (Cal. Gov. Code, § 12900 *et seq.*) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285.0 *et seq.*).

d. Consultant shall permit access to all records of employment, employment advertisements, application forms, and other pertinent employment data and records by the California Fair Employment and Housing Commission, or any other

agency designated by the State of California, for the purpose of investigating compliance with Subsection (a) of this Section 17.

e. Consultant shall cause the foregoing Subsections (a) and (b) of this Section 17 to be inserted in all agreements with subconsultants entered into as a result of this Agreement, except agreements for standard commercial supplies or raw materials.

18. NOT USED

19. Disadvantaged Business Enterprise (“DBE”). To the extent Consultant engages any subcontractor under this Agreement, it shall comply with the following:

a. Consultant agrees to commit to Authority’s contract-specific DBE goal of using DBE subcontractors for at least 5.71% of the total value of this Agreement.

b. Consultant and its subconsultants shall ensure non-discrimination in the administration of this Agreement and shall carry out all applicable requirements of 49 C.F.R. Part 26. Authority’s DBE Program, as required by 49 C.F.R. Part 26 and as approved by the United States Department of Transportation (“U.S. DOT”), is incorporated by reference in this Agreement, as though fully set forth herein. Authority shall maintain oversight of Consultant’s activities to ensure full compliance with the DBE requirements. Consultant shall not falsify a DBE subconsultant’s name, amount and/or actual work to be performed.

c. During the term of this Agreement, Consultant shall comply with the following:

(1) Consultant shall meet its DBE participation goal commitment as stated in Subsection (a) of this Section 19. Consultant’s failure to achieve the DBE participation goal commitment as stated in Subsection (a) of this Section 19 shall be a breach of this Agreement and subject to any remedies Authority deems necessary to ensure compliance with applicable Federal regulations. However, Consultant shall not be in breach of this Agreement if a failure to meet the DBE participation goal commitment is a result of circumstances beyond the control of Consultant and if Consultant exercised good faith efforts to do so and timely advised Authority of all actions undertaken.

(2) Consultant shall submit to Authority, a copy of each executed DBE subconsultant agreement within 30 days after the date of this Agreement.

(3) Consultant shall take all necessary and reasonable steps to ensure that DBE subconsultants successfully perform the services under this Agreement.

(4) Consultant shall submit a “Monthly DBE Subcontractors Paid Report and Payment Verification Form” (“Form 103”, attached hereto as Exhibit G) to Authority with each invoice until completion of the contract, commencing with the first invoice. Failure to submit these reports shall result in a penalty of \$10 per day, per report until received by Authority. Authority may impose other remedies and/or sanctions as deemed necessary to effectuate Consultant’s compliance. Authority shall review Consultant’s Form 103 reports to ensure that Consultant’s reported DBE participation is consistent with Consultant’s DBE participation goal commitment. Provisions for crediting DBE participation towards meeting Consultant’s participation goal commitment shall be calculated in accordance with 49 C.F.R. § 26.55..

(5) The dollar amount of Agreement Amendments, or any other modifications to this Agreement that increase or decrease the value of work in which a DBE subconsultant’s participation has been committed to in the proposal shall be commensurately added or subtracted from the total contract base figure used to compute actual DBE attainments. Revised total contract values shall be reflected in the Form 103.

(6) Consultant shall not credit the participation of DBE subconsultants towards the DBE participation goal commitment until the amount being credited has been paid to the DBE subconsultants.

(7) All DBE subconsultants that are to be credited by Consultant towards achievement of Consultant’s DBE participation goal commitment must be certified under 49 C.F.R. Part 26.

(8) Consultant shall notify a DBE subconsultant in writing of any potential problem and attempt to resolve the problem prior to formally requesting Authority’s approval to substitute the DBE subconsultant.

(9) Consultant shall notify Authority in a timely manner of any problems anticipated in attaining Consultant’s DBE participation goal commitment.

(10) Consultant may not terminate for convenience a DBE subconsultant and perform the work of the terminated DBE subconsultant with its own forces, or those of an affiliated subconsultant, without Authority’s prior written approval.

(11) Substitutions of a DBE subconsultant or material change in any scope of work to be performed by an approved DBE subconsultant must be requested in writing by Consultant and approved by Authority in writing prior to the occurrence of any such substitution or change.

(12) If a DBE subconsultant originally listed on Exhibit D is unable to perform the work in accordance with the specifications of this Agreement, Consultant shall make good faith efforts to replace the DBE subconsultant with another DBE subconsultant. Good faith efforts shall be directed at substituting another DBE subconsultant to perform at least the same amount of work under this Agreement as the

DBE subconsultant that was unable to perform, to the extent necessary to meet the Consultant's DBE participation goal commitment.

(13) Only DBE subconsultants eligible to participate pursuant to 49 C.F.R. Part 26 shall perform the services under this Agreement. Consultant shall not knowingly and willfully falsify a DBE subconsultant's eligibility, as such actions are criminal violations. Any fraud or waste, abuse or mismanagement of Federal funds should be immediately reported to the Office of Inspector General of the U.S. Department of Transportation.

20. Compliance with Living Wage Policy. Consultant acknowledges having received and reviewed a copy of Authority's "Living Wage Policy," Chapter 8 of Title III of the Authority's Administrative Code, which is incorporated herein by this reference as though fully set forth herein. Consultant's violation of the Living Wage Policy shall entitle Authority, at its option, to impose any of the following penalties on Consultant:

a. For failure to pay the minimum wages and overtime required by the Living Wage Policy, double back pay for all time worked during which the violation continued;

b. For failure to pay medical benefits required by the Living Wage Policy, double the difference between the minimum wage required herein without benefits and such minimum wages required herein with benefits, during the period of the violation;

c. For failure to allow an employee to take requested compensated or uncompensated time off as required by the Living Wage Policy, damages in an amount equivalent to that employee's wages for the time off requested and not received, or, at the employee's election, additional compensated time off in an amount equivalent to the time off requested and not received;

d. Termination of the contract; and

e. Other rights and remedies as provided by law.

21. Compliance with Laws. In the performance of the services required under this Agreement, Consultant shall abide by and conform with and to any and all applicable laws of the United States and the State of California, and the Authority's codes and regulations.

22. Prompt Payment Clause.

a. Consultant shall pay each subconsultant (if any) for the satisfactory work performed under this Agreement, no later than ten calendar days from the receipt of each payment Consultant receives from Authority. Consultant agrees further to return retainage payments to each subconsultant within 30 calendar days after the subconsultant's work is satisfactorily completed.

b. In accordance with Revised § 26.29 “Prompt Payment Provisions” (Federal Register – dated June 16, 2003) Authority, at its discretion may elect to utilize one of the following methods to comply with the prompt payment of retainage requirement:

(1) Decline to hold retainage from Consultant and prohibit Consultant from holding retainage from the subconsultant;

(2) Decline to hold retainage from Consultant and require a contract clause obligating Consultant to make prompt and full payment of any retainage kept by Consultant to the subconsultant within 30 days after the subconsultant’s work is satisfactorily completed; or

(3) Hold retainage from Consultant and provide for prompt and regular incremental acceptances of portions of Consultant, pay retainage to prime consultant based on these acceptances, and require a contract clause obligating the Consultant to pay all retainage owed to the subconsultant for satisfactory completion of the accepted work within 30 days after payment to Consultant.

c. Failure to comply with this Section 22 or delay in payment without Authority’s prior written approval shall constitute noncompliance, which may result in appropriate administrative sanctions, including, but not limited to, a penalty of two percent of the invoice amount due per month for every month that payment is not made.

d. These prompt payment provisions must be incorporated in all subconsultant agreements entered into as a result of this Agreement.

23. Business and Travel Expenses. Authority shall not reimburse business, travel or other expenses except on an exceptional basis when Authority otherwise agrees in writing before such expenses are incurred. If Authority so agrees, Authority’s agreement shall be interpreted narrowly to apply only to those expenses specifically identified, and only for the amounts specifically stated or less. To be clear, the amount set forth in Section 3 shall be the entire compensation for the Work. Such amount includes any and all travel and business expenses related thereto such as (but not limited to) administration, telephone calls, faxes, postage, filing fees, mileage, flights, hotels, car rentals, meals, messenger services, overnight mail services, computerized research of any kind, photocopying, printing, scanning, and subcontractor expenses and costs.

24. Accounting Requirements. Consultant and its subconsultants shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system shall conform to the Generally Accepted Accounting Principles (“GAAP”) and cost principles set forth in Titles 48 and 49 of the Code of Federal Regulations, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. In conducting an audit of the costs and match credits claimed under these

provisions, auditors shall rely to the maximum extent possible on any prior audit of Consultant pursuant to the provisions of Federal and State laws. In the absence of such a prior audit, any acceptable audit work performed by Consultant's external and internal auditors and/or Federal auditors shall be relied upon to the maximum extent possible by any subsequent auditors when planning and conducting additional audits.

25. Records Retention and Access to Records. For all purposes related to Consultant's and its subconsultant's performance under this Agreement, including but not limited to the purpose of determining compliance with Section 2500, *et seq.* of Title 21 of the California Code of Regulations, and other matters connected with the performance of Consultant's contracts with third parties pursuant to California Government Code Section 8546.7, Consultant and its subconsultants (if any) shall maintain all books, documents, papers, records, accounting records and other evidence pertaining to the performance of this Agreement and such third-party contracts, including but not limited to, the cost of administering the various contracts. Consultant and its subconsultants shall maintain and make available for inspection, excerpting and/or audit such materials at their respective offices at all reasonable times during this Agreement period and for three years from the date of final payment to Consultant and its subconsultants under this Agreement. Consultant shall make such materials available and grant access to the following entities and their respective designees: the Authority, LACMTA, the U.S. DOT, the California State Auditor, the Federal Highway Administrator, the United States Controller General, the State of California, and any duly authorized representative of the Federal Government. Copies thereof shall be furnished by Consultant if requested.

26. Assignment. Consultant shall not assign or attempt to assign any portion of this Agreement without the prior written approval of Authority. Contractor's assignment or attempt to assign any portion of this Agreement shall be void.

27. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Authority of any payment to Consultant constitute or be construed as a waiver by Authority of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by Authority shall in no way impair or prejudice any right or remedy available to Authority with regard to such breach or default.

28. Termination. Authority may terminate this Agreement with or without cause upon 15 days' written notice to Consultant. The effective date of termination shall be the date specified in the notice of termination, or, in the event no date is specified, the 15th day following delivery of the notice. Upon notice of termination, Consultant shall discontinue performing services under this Agreement. In the event of termination by Authority, Consultant shall be paid full compensation for all services performed in accordance with the terms this Agreement, in an amount equal to the amount of services actually performed prior to the effective date of termination, based upon the hourly rates, maximum fees and billing requirements set forth in Exhibit

B. Consultant shall not be paid for any terminated services and expenses performed subsequent to the effective date of termination.

29. Suspension. Authority, may in writing, order Consultant to suspend all or any part of the services under this Agreement for the convenience of Authority or for work stoppages beyond the control of Authority and Consultant.

30. Disputes Resolution.

a. Unless Authority and Consultant otherwise agree in writing, all disputes between Authority and Consultant regarding the interpretation of this Agreement or the performance by a party hereunder shall be subject to the dispute resolution procedures set forth in this Section 30 as a condition precedent to the institution of legal or equitable proceedings by Authority or Consultant pursuant to Subsection (f) of this Section 30. Authority and Consultant shall notify the other party in writing within a reasonable time after the first observance of any dispute or claim for injury or damage to person or property because of an act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable. Upon notification of a dispute or claim, Authority and Consultant shall meet promptly to attempt to resolve the dispute or claim.

b. If unsuccessful, then prior to the initiation of any legal or equitable action or proceeding, the CEO shall designate a representative to resolve the dispute or claim. To facilitate resolution, Authority and Consultant shall have the opportunity to prepare and submit to the representative a “position paper” setting forth the material basis for their respective position.

c. No later than 15 days after the date on which the representative reviews the position papers, the representative shall issue a written decision resolving the dispute or claim and setting forth the reasons for the decision. The representative’s written decision is final and shall notify the parties of their right to appeal.

d. Within ten days after the representative’s written decision was noticed to Authority and Consultant, either party may seek review of the decision by filing a written appeal with the CEO. If neither party timely files a written appeal, the representative’s decision shall be deemed confirmed. If either party timely files a written appeal with the CEO, the parties shall have the opportunity to present oral and written evidence in support of their respective positions. No later than ten days after the date on which the CEO reviews the evidence, the CEO shall issue a written statement setting forth his decision and the reasons for his decision. The decision of the CEO shall be binding. For any claim, counterclaim, dispute or other matter valued at an amount less than or equal to \$100,000, such decision of the CEO (or representative where no appeal is made in accordance with this subsection (d)) is binding upon the parties and shall not be the subject of any additional action or proceeding, including in a court of law or equity.

e. Unless otherwise directed by Authority, Consultant shall continue performance under this Agreement while matters in dispute are being resolved.

f. All claims, counterclaims, disputes, and other matters valued at an amount greater than \$100,000 that remain in question between Authority and Consultant regarding the interpretation of this Agreement or the performance by a party under this Agreement after exercising the dispute resolution procedures set forth in Subsections (a) through (d) of this Section 30 may be brought in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California, as applicable.

g. The duties and obligations imposed by this Agreement shall be in addition to any duties, obligations otherwise imposed by law. No action or failure to act by Authority or Consultant shall constitute a waiver of any duty or obligation imposed by this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

31. Attorney's Fees. In the event that either party to this Agreement shall commence in a court of law or equity any action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the non-prevailing party its reasonable costs of suit, including reasonable attorney's, expert witnesses' and consultants' fees, and costs on appeal.

32. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed duly and properly received on: (i) the day of delivery if delivered by hand during regular business hours or by facsimile before or during regular business hours; or (ii) on the third business day following deposit in the United States mail, postage prepaid, to the addresses set forth in this Section 32, or to such other addresses as the Authority and Consultant may designate in writing.

Authority:

Metro Gold Line Foothill Extension Construction Authority
406 East Huntington Drive, Suite 202
Monrovia, CA 91016
(626) 471-9050
(626) 471-9049 (facsimile)
ATTN: [Insert name of Authority Representative]

Consultant:

[_____]
ATTN: [Insert name of Consultant Representative]

33. Representations and Warranties. Consultant represents, warrants, covenants to Authority:

a. Organization. Consultant is a duly organized, validly existing and in good standing under the laws of the state of its organization and in every other state in which it conducts business.

b. Authority. Consultant has all requisite licenses, permits, certifications, power and authority to carry on its business as presently conducted, to enter into this Agreement, and to perform the services under this Agreement. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with, any provisions of the charter, bylaws or governing documents of Consultant, or any agreements or instrument to which Consultant is a party or by which Consultant is bound, or any judgment, decree, order, statute, rule or regulation applicable to Consultant.

c. Qualified. Consultant and all Subconsultants (if any) are qualified and able to perform the services in accordance with the standard set forth in Section 1.

d. Approval. The execution, delivery and performance of this Agreement by Consultant and the consummation of the transactions contemplated by this Agreement have been duly and validly authorized.

e. Binding Obligation. This Agreement has been duly executed and delivered on behalf of Consultant, and all documents and instruments required hereunder to be executed and delivered by Consultant have likewise been duly executed and delivered. This Agreement does, and such documents and instruments will, constitute legal, valid and binding obligations of Consultant in accordance with their terms.

34. Federal Requirements. Consultant shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those of the Federal Transportation Administration (“FTA”) and those listed in Exhibit E, attached hereto, or by reference in this Agreement, as they may be amended or promulgated from time to time during the term of this Agreement. Consultant’s failure to so comply shall constitute a material breach of this Agreement.

35. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the domestic laws of the State of California without regard to conflict of law doctrines, principles or provisions.

36. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument. This Agreement may be executed by a party’s signature transmitted by facsimile (“fax”) or scanned into a digital format and emailed, and copies of this Agreement executed and delivered by means of faxed or emailed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed or emailed

signatures as if such signatures were originals. Any party executing and delivering this Agreement by fax or email shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature. All parties hereto agree that a faxed or emailed signature page may be introduced into evidence in any proceeding arising out of or related to this Agreement as if it were an original signature page.

37. Agreement to Control. In the event of any inconsistency between the provisions of this Agreement and Consultant's proposal, the terms of this Agreement shall control.

38. Entire Agreement. This Agreement represents the entire and integrated agreement between Consultant and Authority, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by Consultant and Authority. Amendments shall be signed by the CEO or the Chairman of the Authority Board on behalf of Authority.

39. Severability. In the event any provision, section or subsection of this Agreement is declared or determined to be unlawful, invalid, or unconstitutional, such declaration or determination shall not affect, in any manner, the legality of the remaining provisions, sections, and subsections of this Agreement.

40. Time is of the Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof; and each and every provision hereof is hereby declared to be and made a material, essential, and necessary part of this Agreement.

41. Exhibits. All exhibits referred to in this Agreement are incorporated herein by this reference.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“Authority”

METRO GOLD LINE FOOTHILL
EXTENSION CONSTRUCTION
AUTHORITY

By: _____
Habib F. Balian
Chief Executive Officer

Date: _____

“Consultant”

[_____]

By: _____

Name: _____

Title: _____

Date: _____

AUTHORITY INTERNAL USE ONLY – NOT PART OF CONTRACT	
Chief Contracting Officer	_____
Chief Financial Officer	_____

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall perform the following work in accordance with the Agreement:

[Insert Scope of Services]

EXHIBIT B
COMPENSATION

[Insert hours, cost and schedule matrices / information from Proposal (RFP Section 5.2 and 5.3) as may have been modified in negotiations]

EXHIBIT C
NOT USED

EXHIBIT D

SUBCONSULTANTS

[Insert from Proposal (if any).]

NOTE: No subconsultants are anticipated for this Work]

EXHIBIT E

FEDERAL REQUIREMENTS

Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those set forth below.

1. Incorporation of FTA Terms: The following provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the following provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding anything to the contrary herein, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in this Agreement, as they may be amended or promulgated from time to time during the term of this Agreement. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause Authority to be in violation of FTA terms and conditions. Consultant's failure to so comply shall constitute a material breach of this Agreement.

2. Energy Conservation: Consultant shall comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201 *et seq.*).

3. No Government Obligation to Third Parties: Authority and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to Authority, Consultant, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement. Consultant shall include the above clause in each subconsultant agreement financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subconsultant subject to this clause.

4. Program Fraud and False or Fraudulent Statements or Related Acts:

a. Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended (31 U.S.C. § 3801 *et seq.*) and the U.S. DOT regulations (49 C.F.R. Part 31), apply to Consultant's actions pertaining to this Project. Upon execution of the this Agreement, Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FTA assisted project for which the work is being performed under this Agreement. In addition to other penalties that may be

applicable, Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Consultant to the extent the Federal Government deems appropriate.

b. Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 on Consultant, to the extent the Federal Government deems appropriate.

c. Consultant shall include the above clauses in each subconsultant agreement financed in whole or in part with Federal assistance provided by the FTA. Consultant shall not modify the above clauses, except to identify the subconsultant who will be subject to the provisions.

5. Civil Rights:

a. Nondiscrimination – In accordance with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102), section 202 of the Americans with Disabilities Act of 1990 (“ADA”), as amended (42 U.S.C. § 12132), and the Federal Transit Law at 49 U.S.C. § 5332, Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. In addition, Consultant shall comply with applicable Federal implementing regulations and other implementing requirements the FTA may issue.

b. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*), and the Federal Transit Laws at 49 U.S.C. § 5332, Consultant shall comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations (41 C.F.R. Chapter 60), which implement Executive Order No. 11246 (“Equal Employment Opportunity”) as amended by Executive Order No. 11375 (“Amending Executive Order 11246, Relating to Equal Employment Opportunity”) (42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the Project. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Consultant shall comply with any other implementing requirements the FTA may issue.

c. Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 623) and the Federal Transit Law at 49 U.S.C. § 5332, Consultant shall refrain from discrimination against present and prospective employees for reason of age. In addition, Consultant shall comply with any other implementing requirements the FTA may issue.

d. Disabilities – In accordance with section 102 of the ADA, as amended (42 U.S.C. § 12112), Consultant shall comply with the requirements of the U.S. Equal Employment Opportunity Commission regulations (29 C.F.R. Part 1630), pertaining to employment of persons with disabilities. In addition, Consultant shall comply with any other implementing requirements the FTA may issue.

e. Consultant shall include these requirements in each subconsultant agreement financed in whole or in part with Federal assistance provided by the FTA, modified only if necessary to identify the affected parties.

6. Conformance With National Intelligent Transportation Systems (ITS) Architecture: To the extent applicable, the contactor agrees to conform to the National ITS Architecture and Standards as required by Section 5206(e) of the Transportation Equity Act for the 21st Century (23 U.S.C. § 502 note), and comply with FTA Notice, "Federal Transit Administration National ITS Architecture Policy on Transit Projects" (66 Fed. Reg. 1455-01 (January 8, 2001)), and other Federal requirements that may be issued.

7. Debarment and Suspension: This contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, Consultant is required to verify that none of Consultant's principals, as defined at 49 C.F.R. § 29.995, or affiliates, as defined at 49 C.F.R. § 29.905, are excluded or disqualified as defined at 49 C.F.R. §§ 29.940 and 29.945. Consultant is required to comply with 49 C.F.R. § 29, Subpart C and must include the requirement to comply with 49 C.F.R. § 29, Subpart C in any subconsultant agreement it enters into as a result of this Agreement. By signing this Agreement, Consultant certifies as follows:

The certification in this clause is a material representation of fact relied upon by Authority. If it is later determined that Consultant knowingly rendered an erroneous certification, in addition to remedies available to Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Consultant agrees to comply with the requirements of 49 C.F.R. § 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Consultant further agrees to include a provision requiring such compliance in its subcontracts.

8. Clean Water: Consultant shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*). Consultant shall report each violation to Authority. Consultant acknowledges and agrees that Authority shall, in turn, report each violation

as required to assure notification to the FTA and the appropriate United States Environmental Protection Agency (“EPA”) regional office. Consultant shall also incorporate these requirements in all subconsultant agreements entered into as a result of this Agreement exceeding One Hundred Thousand Dollars (\$100,000) financed in whole or in part with Federal assistance provided by the FTA.

9. Clean Air: Consultant shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (“CAA”), as amended (42 U.S.C. § 7401 *et seq.*). Consultant shall report each violation to Authority and acknowledges and agrees that Authority shall, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. Consultant shall also incorporate these requirements in all subconsultant agreements entered into as a result of this Agreement exceeding One Hundred Thousand Dollars (\$100,000) financed in whole or in part with Federal assistance provided by the FTA.

10. Lobbying: Pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), as amended by the Lobbying Disclosure Act of 1995 (Pub. L. 104-65; 2 U.S.C. § 1601 *et seq.*), Consultants who apply or bid for an award of One Hundred Thousand Dollars (\$100,000) or more shall file the certification and disclosure form required under 49 C.F.R. Part 20 (Restrictions Upon Lobbying). Subconsultant(s) shall certify to Consultant and Consultant shall certify to Authority that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultant shall also incorporate these requirements in all subconsultant agreements entered into as a result of this Agreement.

11. Access to Records and Reports:

a. Consultant agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions. As reasonably may be required, Consultant shall, pursuant to 49 C.F.R. § 633.15, provide the FTA Administrator or his or her designee and the Project Management Oversight (“PMO”) contractor access to Consultant’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), that is receiving Federal funds through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

b. Consultant shall permit the FTA Administrator and the PMO contractor to reproduce Consultant’s records or to copy excerpts and transcriptions as reasonably needed.

c. Consultant shall maintain all records required under this Section 11 of Exhibit E for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Consultant agrees to maintain same until Authority, the FTA Administrator, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

12. Fly America: Consultant shall comply with the Fly America Act (49 U.S.C. § 40118) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Consultant shall also incorporate these requirements in all subconsultant agreements entered into as a result of this Agreement that may involve international air transportation.

13. Drug Free Workplace: Consultant shall comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 *et seq.*).

14. Interest of Members of or Delegates to Congress: In accordance with 18 U.S.C. § 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising there from.

15. Environmental Protection: Consultant shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 *et seq.*) consistent with Executive Order No. 11514 ("Protection and Enhancement of Environmental Quality"), as amended (42 U.S.C. § 4321 note).

16. Access Requirements For Persons With Disabilities: Consultant shall comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. Consultant shall also comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps, with the ADA, as amended (42 U.S.C. § 12101 *et seq.*), which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

a. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" (49 C.F.R. Part 37);

b. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving Federal Financial Assistance” (49 C.F.R. Part 27);

c. U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs” (49 C.F.R. Part 26);

d. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services” (28 C.F.R. Part 35);

e. FTA regulations, “Transportation for Elderly and Handicapped Persons” (49 C.F.R. Part 609); and

f. Any implementing requirements the FTA may issue.

17. Contract Work Hours and Safety Standards:

a. Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.


b. Violation; Liability For Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c. Withholding For Unpaid Wages And Liquidated Damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

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EXHIBIT F – FORM 103

	MONTHLY DBE SUBCONTRACTORS PAID REPORT SUMMARY AND PAYMENT VERIFICATION (Form 103)
Reporting Period (month): _____, 20____	

Contract/Project Number: _____	Report Number: _____	Report prepared by: _____
Project Name: _____	Original Contract Award Amount: _____	Title: _____
Prime Name: _____	Current Contract Value: _____	Telephone Number: () _____
Address: _____	% of Project Complete: _____	
Telephone Number: () _____	MGL Payment this Month: _____	Date of last Progress Payment _____
Contract Award Date: _____	Total Dollars Paid to Prime to Date: _____	received from MGL: _____
Contract DBE Goal: ____% (of total Contract Value)	Total Dollars Paid to DBEs this reporting period: _____	DBE Goal Attainment to date: ____% _____
Prime's DBE Commitment: ____% (of total Contract Value)	Total Dollars Paid to DBEs to date: _____	

DBE SUB CONTRACTORS	Dollar Amount Paid This Reporting Period	Dollar Amount Paid to Date	Type of Work Performed (Scope)	Original Dollar Amount Committed to DBE at Contract Award	\$ +/- resulting from Change Order Activity	% of Work Completed	Date of Last Payment to DBE
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Subcontractor <input type="checkbox"/> Broker <input type="checkbox"/> Trucker <input type="checkbox"/> Supplier: Regular Dealer <input type="checkbox"/> or Manufacturer <input type="checkbox"/> Attach Verification of Payment with Report	\$	\$					
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Subcontractor <input type="checkbox"/> Broker <input type="checkbox"/> Trucker <input type="checkbox"/> Supplier: Regular Dealer <input type="checkbox"/> or Manufacturer <input type="checkbox"/> Attach Verification of Payment with Report	\$	\$					
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Subcontractor <input type="checkbox"/> Broker <input type="checkbox"/> Trucker <input type="checkbox"/> Supplier: Regular Dealer <input type="checkbox"/> or Manufacturer <input type="checkbox"/> Attach Verification of Payment with Report	\$	\$					

Comments/issues in attaining goal attainment, and/or Good Faith Efforts performed during this reporting period can be documented in a separate sheet and included with the report.

I certify under penalty of perjury that payments to subcontractors and suppliers have been made from previous payments received under this Project, and timely payments have been made in accordance with the Prompt Payment Provisions set forth in Metro Gold Line Construction Authority's Disadvantaged Business (DBE) Program, and the California Public Contract and Business and Professions Codes.

Report reviewed by: _____ Title: _____ Date: _____

If necessary, this form can be duplicated to list all DBE subcontractors paid in this reporting period.

[DBE Form 103 (8/05)]

EXHIBIT I

Metro Gold Line Foothill Extension Bus Interface Plan - Draft



FORM 60

	Page _____
Contract Pricing Proposal (Services)	"Form 60" of _____
Name of Proposer:	Division(s) Location(s) where services are to be performed:
Home Office Address:	Contract #
Services to be performed:	Total Amount of Proposal

Detailed Description of Cost Elements

1. Direct Labor	Est Hours	Rate/Hour	Est. Cost (\$)	Total Est. Cost
Total Direct Labor				
2. Labor Overhead	OH Rate(%)	x Base =	Est. Cost	Total Est. Cost
Total Labor Overhead				
3. Travel*			Est. Cost	Total Est. Cost
a. Transportation				
b. Per Diem or Subsistence				
Total Travel				
4. Subcontractors/Suppliers**			Est. Cost	Total Est. Cost
Total Subcontractors/Suppliers				
5. Other Direct Costs*				
Total Direct Cost and Overhead				
6. General & Admin. Expense (_____ % of Item Nos; _____)				
7. Fee (10% of Direct Labor + Overhead + 3% Subs)				
Total Estimated Cost and Fee				

* Itemize on second page of "Form 60"
 ** Attach "Form 60" for all proposed subcontractors

EXHIBIT I
Metro Gold Line Foothill Extension Bus Interface Plan - Draft

Contract Pricing Proposal (Services)			"Form 60"	Page 2 of 3
Supporting Schedule				
Item No.	Item Description			Est. Cost (\$)
<u>Type Name and Title</u>			<u>Signature</u>	
<u>Name of Firm</u>			<u>Date of submission</u>	

EXHIBIT I
Metro Gold Line Foothill Extension Bus Interface Plan - Draft

Attachment to Form 60				
			"Form 60"	Page 3 of 3
Name of Proposer:			Division(s) Location(s) where services are to be performed:	
Home Office Address:			Contract #	
Services to be performed:			Total Amount of Proposal	
Contract Pricing Proposal (Services)				
Detailed Description of Direct Labor Category				
1. Direct Labor	Est. Hours	Rate/Hour	Est. Cost (\$)	
Total Hours				
Total Direct Labor				\$ -